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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF

R-14-0004

**PETITION TO AMEND RULE
111, ARIZ. R. SUP. CT., RULE
28, ARCAP, AND RULE 31.25,
ARIZ. R. CRIM. P.**

**ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL'S
COMMENTS IN OPPOSITION TO PETITION TO
AMEND RULE 111, ARIZ. R. SUP. CT., RULE 28,
ARCAP, AND RULE 31.25, ARIZ. R. CRIM. P. ,
ARIZONA RULES OF CRIMINAL PROCEDURE**

Pursuant to Arizona Rules of the Supreme Court, Rule 28(C), the Arizona Prosecution Attorneys' Advisory Council ("APAAC") hereby submits its comments in opposition to R-14-0004. The petition seeks to allow the citation of unpublished memorandum decisions for persuasive value. The proposed change is unnecessary, and would create confusion and inconsistencies in court decisions.

A memorandum decision is a written disposition of a matter not intended for publication. Ariz. R. Civ. App. P., Rule 28(a)(2). In order for an opinion to be published, it must meet certain criteria outlined in Rule 28(b). It reads:

(b) When disposition to be by opinion – Dispositions of matters before the court requiring a written decision shall be by written opinion when a majority of the judges acting determine that it:

1. establishes, alters, modifies or clarifies a rule of law, or

2. calls attention to a rule of law which appears to have been generally overlooked, or
3. criticizes existing law, or
4. involves a legal or factual issue of unique interest or substantial public importance, or
5. if the disposition of a matter is accompanied by separate concurring or dissenting expression, and the author of such separate expression desires that it be published, then the decision shall be by opinion.

Ariz. R. Civ. App. P., Rule 28(b).

Rule 28 provides an avenue for publication of opinions and establishes criteria for their publication. Clearly, the rule contemplates that not all decisions should be published. Instead, only those rulings meeting the outlined criteria merit consideration for publication. The list of criteria is sufficiently broad to allow for the publication of opinions that will provide guidance as to the interpretation of existing laws and also provide an avenue for the evolution of law. Accordingly, those opinions may be cited by parties to allow for enforcement of existing precedent, argument for change in a law and the interpretation of laws. Opinions have great persuasive value, and therefore, citation to unpublished memoranda is not necessary.

Further, in setting the criteria for publication, the rule in turn implies which decisions do not merit publication. Generally, memorandum decisions do not establish, alter, or modify rules of law, nor do they call attention to an overlooked rule of law. In fact, many decisions involve matters of already existing rules of law

1 or are specific to the facts of the case. Citing these decisions which are not meant for
2 publication only invites confusion and inconsistencies in the courts.
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4 In summary, published opinions provide guidance as to the rules of law, and
5 citation to those opinions not meant for publication is unnecessary and invites
6 confusion and inconsistency. As such, APAAC opposes the proposed changes.
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8 Respectfully submitted this day of May, 2014.

9 ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

10 SHEILA SULLIVAN POLK
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